

Nos. 14,823, 14,824, 14,838, 14,839, 14,840

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 14,823.

CARPINTERIA LEMON ASSOCIATION, a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CARPINTERIA LEMON ASSOCIATION, a corporation,

Respondent.

No. 14,824.

SEABOARD LEMON ASSOCIATION, a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

SEABOARD LEMON ASSOCIATION, a corporation,

Respondent.

(Over)

PETITION FOR REHEARING.

FILED

JAN - 9 1957

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No. 14,838.
OXNARD CITRUS ASSOCIATION, *et al.*,
vs.
NATIONAL LABOR RELATIONS BOARD,
and
NATIONAL LABOR RELATIONS BOARD,
vs.
OXNARD CITRUS ASSOCIATION, *et al.*,

Petitioners,
Respondent,
Petitioner,
Respondents.

No. 14,839.
SOMIS LEMON ASSOCIATION, a corporation,
vs.
NATIONAL LABOR RELATIONS BOARD,
and
NATIONAL LABOR RELATIONS BOARD,
vs.
SOMIS LEMON ASSOCIATION, a corporation,

Petitioner,
Respondent,
Petitioner,
Respondent.

No. 14,840.
Dec. 11, 1956.
SANTA CLARA LEMON ASSOCIATION, a corporation,
vs.
NATIONAL LABOR RELATIONS BOARD,
and
NATIONAL LABOR RELATIONS BOARD,
vs.
SANTA CLARA LEMON ASSOCIATION, a corporation,

Petitioner,
Respondent,
Petitioner,
Respondent.

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Nos. 14,823, 14,824, 14,838, 14,839, 14,840
IN THE
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No. 14,823.

CARPINTERIA LEMON ASSOCIATION, a corporation,	<i>Petitioner,</i>
<i>vs.</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Respondent,</i>
<i>and</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Petitioner,</i>
<i>vs.</i>	
CARPINTERIA LEMON ASSOCIATION, a corporation,	<i>Respondent.</i>

No. 14,824.

SEABOARD LEMON ASSOCIATION, a corporation,	<i>Petitioner,</i>
<i>vs.</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Respondent,</i>
<i>and</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Petitioner,</i>
<i>vs.</i>	
SEABOARD LEMON ASSOCIATION, a corporation,	<i>Respondent.</i>

No. 14,838.

OXNARD CITRUS ASSOCIATION, <i>et al.</i> ,	<i>Petitioners,</i>
<i>vs.</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Respondent,</i>
<i>and</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Petitioner,</i>
<i>vs.</i>	
OXNARD CITRUS ASSOCIATION, <i>et al.</i> ,	<i>Respondents.</i>

No. 14,839.

SOMIS LEMON ASSOCIATION, a corporation,	<i>Petitioner,</i>
<i>vs.</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Respondent,</i>
<i>and</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Petitioner,</i>
<i>vs.</i>	
SOMIS LEMON ASSOCIATION, a corporation,	<i>Respondent.</i>

No. 14,840.

Dec. 11, 1956.

SANTA CLARA LEMON ASSOCIATION, a corporation,	<i>Petitioner,</i>
<i>v's.</i>	
NATIONAL LABOR RELATIONS BOARD,	<i>Respondent,</i>
and	
NATIONAL LABOR RELATIONS BOARD,	<i>Petitioner,</i>
<i>v's.</i>	
SANTA CLARA LEMON ASSOCIATION, a corporation,	<i>Respondent.</i>

PETITION FOR REHEARING.

*To the Honorable William Healy and James Alger Fee,
Circuit Judges, and Gus J. Solomon, District Judge:*

Petitioners, CARPINTERIA LEMON ASSOCIATION, SEABOARD LEMON ASSOCIATION, OXNARD CITRUS ASSOCIATION, SOMIS LEMON ASSOCIATION and SANTA CLARA LEMON ASSOCIATION, respectfully file this Petition for Rehearing and represent unto the Court as follows:

I.

The petitioners filed a Petition for Review of the Orders of the National Labor Relations Board in the above entitled cases on or about July 21, 1955.

II.

The said cases were argued before this Honorable Court at Los Angeles, California, on or about April 6, 1956.

III.

The majority opinion upholding the Orders of the National Labor Relations Board and the dissenting opinion were filed on December 11, 1956.

IV.

The paramount question involved in all five of these cases was whether the United Packinghouse Workers of America Local 78 was substantially the same union as the United Fresh Fruit and Vegetable Union, LIU No. 78, CIO, or whether it was an entirely different entity from that which was certified as the bargaining agent following the consent election.

V.

In dealing with this question the majority opinion states:

“This factual issue was contested before the Trial Examiner who heard the charges against the associations.

* * * * *

“The Board adopted the Trial Examiner’s finding that there was merely a change of name and affiliation. From our consideration of the record as a whole, we find that this determination is supported by substantial evidence. We are precluded by law from re-examining any Board finding of fact in an unfair labor practice case which is so supported. . . .”

VI.

The petitioners respectfully request that a rehearing of all five cases be granted for the following reasons:

(a) The Order of the Regional Director of the National Labor Relations Board amending the certificate by substituting the United Packinghouse Workers of America, Local 78, as the bargaining agent of petitioners’ employees was issued September 21, 1954. The five cases were heard by the Trial Examiner of the National Labor Relations Board prior to November 19, 1954. The decision in the case of *Dickey v. National Labor Relations Board*, 217 F. 2d 652, was handed down on December

16, 1954, after the amendment of the certificate and after the hearing before the Trial Examiner. That case involved the same identical question of law and it presented a strikingly similar fact situation.

Petitioners contend that the law enunciated by the *Dickey* case is controlling in the five cases here before the Court. The *Dickey* case shows clearly the circumstances under which a certificate can be amended to reflect a change in affiliation.

At the time he ordered the amendment to the certificate the Regional Director did not have knowledge of the decision in the *Dickey* case, nor did the Trial Examiner have this decision as a guide at the time of the hearing conducted by him. Consequently neither was the Regional Director nor the Trial Examiner able to consider the factual situation here involved in the light of the *Dickey* case nor was he able to apply the law enunciated by the *Dickey* case, which is clearly applicable to the facts of these five cases. Therefore, petitioners respectfully submit that inasmuch as the decision of the Trial Examiner, subsequently approved by the Board, was prior to the decision in the *Dickey* case, the Court should consider more fully the decision of the Board rather than rely upon its findings which clearly are not in accord with the decision in the *Dickey* case.

(b) Petitioners further contend that the question before the Court, namely, whether or not the United Packinghouse Workers of America, Local 78, is substantially the same union as the union voted for in the consent election, is a question of law and not a question of fact.

In considering this point the majority opinion states:

“The Board adopted the Trial Examiner’s finding that there was merely a change of name and affilia-

tion. From our consideration of the record as a whole, we find that this determination is supported by substantial evidence.”

It is conceded that there was a change of name and a change of affiliation and that the trial Examiner’s finding of facts as regards these two matters, is correct. However, this does not resolve the legal question of whether or not the United Packinghouse Workers of America, Local 78, is the same union as the union voted for in the consent election in view of all the other facts and circumstances of the case.

The Trial Examiner’s finding that there was only a change of name and a change of affiliation indicates that he has ignored or overlooked all the other undisputed facts relating to the transfer of the defunct United Fresh Fruit and Vegetable Union, Local 78, from an Administrator appointed by the CIO to an Administrator appointed by and controlled by the United Packinghouse Workers of America International. It also indicates that he has ignored the undisputed fact that the Administrator appointed and controlled by the United Packinghouse Workers of America International, and deriving his power and authority solely from the International, was in complete and absolute control of the new union. These facts were undisputed but the Trial Examiner resolved the question of law involved by simply finding as a fact that there was only a change of name and a change of affiliation.

Petitioners contend that the findings of fact as to the change of name and affiliation, while correct as far as they go, fail to cover the other important facts of the case upon which the conclusion of law must be based.

Petitioners contend that if it is concluded, as a matter of law, that the United Packinghouse Workers of America, Local 78, is the same union as that voted for in the consent election, then this conclusion of law is contrary to the law enunciated in the *Dickey* case and it is respectfully submitted that the Court erred in holding that it is precluded from examining this because it is a finding of fact and because it is supported by substantial evidence.

(c) Petitioners further submit that the substantial evidence test enunciated in the case of *Universal Camera Corporation v. National Labor Relations Board*, 340 U. S. 474, has no application to the case at hand because here we are dealing with a question of law and not a question of fact.

VII.

This Petition is filed in accordance with the provisions of Rule 23 of the Rules of the United States Court of Appeals for the Ninth Circuit.

WHEREFORE, the said petitioners pray that a rehearing be granted in all of the above-entitled cases.

Dated: January 8, 1957.

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